

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**RANDOLPH J. THURBER,**

**Plaintiff,**

**VS.**

**STATE OF NEBRASKA, DEPARTMENT  
OF HEALTH AND HUMAN SERVICES;  
TERESA TACK-STOGDILL and  
JONI GEBHARD,**

## Defendants.

**4:06CV3174**

## ORDER

This matter is before the court on defendants' Motions to Stay Discovery [24] & [28] pending the district court's ruling on their motions for dismissal, which are based on sovereign immunity.

Plaintiff's claims are made pursuant to the Age Discrimination in Employment Act ("ADEA"). In *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000), the Supreme Court held that the ADEA's purported abrogation of the States' sovereign immunity was invalid. *Accord Fromm v. Commission of Veterans Affairs*, 220 F.3d 887, 889 (8th Cir. 2000).

Upon review of the file, I find that the motions should be granted, that all discovery (including the parties' obligation to confer and file a planning report pursuant to Fed. R. Civ. P. 26(f)) should be stayed until the motions for dismissal ([22] & [26]) are resolved.

**IT IS SO ORDERED.**

**DATED September 19, 2006.**

**BY THE COURT:**

**s/ F.A. Gossett**  
**United States Magistrate Judge**